

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ENTERPRISE PRODUCTS
OPERATING LLC,

Petitioner,

vs.

IOWA UTILITIES BOARD,

Respondent.

CASE NO. CVCV065780

**ENTERPRISE'S
POST-HEARING BRIEF**

COMES NOW Petitioner, Enterprise Products Operating LLC (“Enterprise”), and submits its Post-Hearing Brief. We ask the court to view this as a supplement to our pretrial briefing and argument before the court. We have also attached the timeline offered as a summary document at our hearing, along with another document that is part of the original record in the case.

INTRODUCTION

1. On February 6, 2023, the Iowa Utilities Board¹ (the “board”) issued to Enterprise an Order Requiring Response and Setting Show Cause Hearing for alleged non-compliance with Iowa Code § 479B.

2. Thirty-eight (38) days later, a Show Cause Hearing lasting twenty-six (26) minutes was held before the board on March 17, 2023.

¹ The state agency, the Iowa Utilities Board (IUB), instituted a name change on July 1, 2024, and is now the Iowa Utilities Commission (IUC).

3. Thirty-five (35) days after the hearing, the board issued a \$1,800,000.00 penalty to Enterprise, its largest penalty ever levied for a permitting error and nine times higher than the maximum penalty permitted by Iowa Code § 479B.21.

4. Enterprise petitioned this court for judicial review of the board's decision on July 7, 2023. *D0002, Petition for Judicial Review of Agency Action.*

5. The court heard oral arguments from both Parties on July 1, 2024.

6. Enterprise now submits its Post-Hearing Brief to the court clarifying some misstatements made by the board during oral argument.

ARGUMENT

Good Faith Compliance: In issuing an unlawful penalty and admittedly considering factors other than the prescriptive factors mandated by the Iowa legislature, the board essentially attempts to shrug off its unlawful actions by stating ignorance of the law by Enterprise is no defense. Enterprise recognizes this legal axiom and challenges the board to apply it to its own actions – ignorance of the law applicable to the enforcement of section 497B of the Iowa Code likewise is no excuse. Here, the board is required by law to consider Enterprise’s good faith efforts to achieve permitting compliance undertaken *after notification of a violation* before it may assess a penalty. The statute does not permit enhancement of the statutory maximum penalty based on an entity’s ignorance of the law. In fact, it prescribes

the opposite – a company’s good faith in attempting to achieve compliance *after notification of a violation SHALL be considered* when determining whether to issue any fine at all. Because of the board’s continued insistence on attempting to nullify Enterprise’s good faith through what amounts to a game of smoke and mirrors to create earlier notice out of whole cloth and which only serves to create confusion, Enterprise seeks to set straight for the court the notice record and subsequent good faith effort.

I. THE ONLY NOTIFICATION TO ENTERPRISE OF ALLEGED NON-COMPLIANCE FOR ENTERPRISE’S PIPELINE WAS SENT ON FEBRUARY 6, 2023, IN THE FORM OF THE SHOW CAUSE ORDER.

The board continues to argue that Enterprise knew it violated Iowa's pipeline permitting requirements in February of 2022. It contends that a notice dated February 14, 2022 – never actually received by Enterprise – directed at the noncompliance of a company and a pipeline that have no relationship to Enterprise started the notice clock for Enterprise. *See Attachment 1, Chronology of Key Events.* A letter directed to an unrelated entity referencing an unrelated pipeline that Enterprise knew nothing about as a matter of undisputed fact could not put Enterprise on notice of its own noncompliance. The letter did not state that federally regulated interstate pipelines were subject to Iowa state regulation and did not direct an internal review and identification of Enterprise’s Iowa assets.

Next, Enterprise was sent and did receive an automated notice from the board's record center with the subject line "Notice of Electronic Filing: HLP-1997-0002." The board staff uploaded a letter addressed to "**Ronald H. Yocum, President of Quantum**, Quantum Pipeline Company, P.O. Box 429550, Cincinnati, Ohio, 45249," and listed a permit number of a pipeline **not** owned by Enterprise. *See Attachment 2, Email Dated Oct. 5, 2022.* Enterprise did not and should not and could not have understood this email to notify them their pipeline within the state was non-compliant. Five days later, Enterprise received an email containing a "corrected letter" from the board, **still listing "Quantum" as the recipient** and identifying the mystery Quantum line, but changing the address to that of Enterprise. Enterprise responded to this letter stating that it **did not own** the pipeline referenced by the board in its "corrected letter." At this point, the board did nothing in response. It did not respond with a request directed at Enterprise to identify assets in Iowa. It did not respond with a notice that an obscure Iowa state law applied to federally regulated interstate pipelines. And, most notably, until February 6, 2023, it did not notify Enterprise of its noncompliance. In fact, it was admittedly unaware itself of Enterprise's noncompliance for over 20 years. None of this put Enterprise on notice or negates Enterprise's immediate action upon receipt of the actual notice in February of 2023.

The board's contention that Enterprise **should have** been aware of its violation before this time is contrary to well-established facts and **not based on any actual evidence.**²

II. THE BOARD IGNORED ENTERPRISE'S GOOD FAITH EFFORTS TO COMPLY.

After being notified of its permitting violation in February of 2023, Enterprise took all necessary steps to attain the required permit and comply with the board's requests. Just thirty-eight (38) days after receiving the Show Cause Order, Enterprise had completed the extensive process of drafting a permit application and filed the same with the board on March 16, 2023. As is typical of these applications, the board had specific requests and revisions for Enterprise to make to its application. Enterprise has fully and completely complied with **every** request made by the board. For instance, the board ordered that Enterprise request three separate permits for its one pipeline in Iowa. Enterprise did so at the board's request. The board then sent Enterprise a letter requesting it recharacterize the application as a "renewal permit" rather than an application for a new permit. Enterprise complied.³

² During the court hearing concerning this review, counsel initially argued Enterprise had no intrastate pipelines, but immediately corrected that statement. The company owns a mile-long gas line. This line is not part of this matter.

³ The board itself has recognized that Enterprise does not have nine pipelines in the state. Requiring a "renewal" application for three permits rather than the nine previously held by

In addition, before receiving notice of the permitting violation, representatives of Enterprise attended an IUB technical conference on hazardous liquid pipelines on December 1, 2022, because Enterprise was grouped with the unrelated Quantum Pipeline Company in the notice requiring attendance at the conference. At that time, Enterprise representatives understood their *intrastate* natural gas line to be state-regulated and they were working with the board on that permit renewal. The materials and information presented at the conference did not convey that Enterprise's federally-regulated *interstate* pipeline was subject to Iowa's permitting requirements. Had Enterprise received this information at the conference and realized it was non-compliant, Enterprise would have taken every step necessary to attain the required permit as it has done since it received actual notice of noncompliance. Its prompt actions demonstrate its good-faith efforts at compliance after receiving the Show Cause Order. However, the board **still** contends Enterprise's attendance at the conference, however confusing it was to Enterprise at the time, does not constitute a reasonable effort to comply with Iowa law. Instead, the board mischaracterizes and ignores Enterprise's good faith attempts to comply in clear violation of Iowa Code § 479B.21.

MAPCO contradicts the board's argument that Enterprise operates nine facilities. The board has thus waived any contention that there are nine pipelines and nine failed permits. Enterprise has objected to the board's request for three separate permits for one line, but has, nonetheless, complied with the board's request in an effort to complete the permitting process and achieve statutory compliance.

The board presented no evidence showing Enterprise knew it violated Iowa Code § 479B prior to February of 2023. The February 14, 2022 letter, and email correspondence in October of 2022, fail to show knowledge of any violation on the part of Enterprise. Further, the testimony of Enterprise representative Suzie Davis at the Show Cause Hearing illustrates that before receiving the Show Cause Order, Enterprise was under the assumption that interstate pipelines were federally regulated and did not need a state-issued permit to operate in Iowa. *See D0016, Show Cause Hearing Transcript*, P. 15 ¶ 23. Enterprise operates facilities in twenty-seven (27) states and of those jurisdictions, only Iowa and its originating state, Texas, maintain state-level permitting schemes. Iowa is an anomaly.⁴ Other than the inaccurate and insufficient notices aforementioned, the board produced no evidence to rebut Ms. Davis' testimony.

The board also failed to produce any evidence that Enterprise **intentionally** violated Iowa Code § 479B. Ms. Davis testified at the Show Cause Hearing that when Enterprise acquired the pipeline in 2002, its previous owner "presented them as permitted as they were required to be." *See D0016, Show Cause Hearing*

⁴ Enterprise prepared a table showing the permitting requirements it must follow for each state of operation. *See D0017 Certified Agency Record* (Part 1 of 2) P. 112. The table is hard to read but it shows that the majority of states do not have a state-level permitting requirement like Iowa, those states include Alabama, Arkansas, Colorado, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Utah, West Virginia, Wisconsin, and Wyoming.

Transcript, P. 8 ¶ 5. Again, the board did not produce any evidence that Enterprise intended to violate the statute.

The record is replete with evidence of Enterprise's good faith attempts to comply before and after it became aware of the violation. There is no evidence in the record showing bad faith by Enterprise to knowingly, intentionally, or willfully disregard Iowa's pipeline permit requirements. Iowa Code § 479B.21(2) obligates the board to consider this when making a penalty determination, which it has repeatedly failed to do.

CONCLUSION

Iowa Code § 17A.19(10) states that the court "may affirm the agency action or remand to the agency for further proceedings." Iowa Code § 17A.19(10) (2024). The Code further states the court:

shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action...

Id. All facts, evidence, and testimony presented in this case show that the board acted beyond its authority delegated to it by Iowa Code § 479B.21. The rights of Enterprise have been substantially prejudiced by the board's decision to levy a \$1,800,000.00 penalty for its permitting error. Enterprise prays the court reverse the board's decision and remand this case for proceedings consistent with its ruling.

WHEREFORE, Petitioner respectfully requests the court remand this action to the Iowa Utilities Board for further proceedings under Iowa Code § 17A.19(10), including a declaratory judgment reversing the board's imposition of a \$1.8 million penalty upon Enterprise, declaring the same unlawful, and for any such further relief deemed just and proper in the premises.

July 26, 2024

By: /s/ Amanda James
Amanda A. James AT0009824
Dennis L. Puckett AT0011362

SULLIVAN & WARD, P.C.
6601 Westown Parkway, Suite 200
West Des Moines, Iowa 50266
Telephone: (515) 244-3500
Facsimile(515) 244-3599
Email: ajames@sullivan-ward.com
Email: dpuckett@sullivan-ward.com

ATTORNEYS FOR PETITIONER

Copies delivered via EDMS